Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
ACCESS CHARGE REFORM	)	CC DOCKET NO. 96-262
PRICE CAP PERFORMANCE REVIEW FOR LOCAL EXCHANGE CARRIERS	)	CC DOCKET NO. 94-1
TRANSPORT RATE STRUCTURE AND PRICING	)	CC DOCKET NO. 91-213
END USER COMMON LINE CHARGES	)	CC DOCKET NO. 95-72

PETITION FOR RECONSIDERATION OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 500 entities engaged in, or providing products or services in support of, telecommunications resale, seeks reconsideration of two elements of the Access Charge Reform Order which will uniquely and adversely impact the small to mid-sized interexchange carriers ("IXCs") that comprise the large majority of TRA's resale carrier members. Specifically, TRA urges the Commission (i) to reduce the multi-line business preferred interexchange carrier charge ("PICC") to the level of the residential and single-line business PICC; and (ii) to reinstate the "unitary" option for purchasing tandem-switched transport. These actions are necessary to avoid inflicting serious competitive and financial harm on the small carrier community.

An active participant in this proceeding, TRA welcomed access charge reform and applauded the Commission for undertaking the formidable task of rendering its access charge regime compatible with the new competitive paradigm established by the Telecommunications Act of 1996. Because of its strongly-held belief that reform of the existing system of interstate access charges was, and continues to be, a essential both to fostering new local exchange/exchange access, and to preserving existing interexchange, competition, TRA supported the Commission's access charge reform initiatives. In its comments, TRA, however, expressed deep concern and urged the Commission to exercise care to ensure that the reformatory actions it ultimately took did not inadvertently dampen competition in the interexchange market, much of which is provided by the hundreds of small to mid-sized carriers that currently populate that market, or hinder the competitive entry by such small to mid-sized providers into the

local exchange/exchange access market. Certainly, "regulatory reform" which produces a diminution in the level of competition and/or the number of competitors in a market is not sound public policy.

TRA submits that certain elements of the Commission's access charge reform package will have precisely this unintended and unfortunate result, both diminishing the number of small and mid-sized competitors in the interexchange market and limiting the available service options for small business customers. For example, imposition of a $2.75 (and ultimately higher) multi-line business PICC will place small IXCs between the proverbial "'rock and a hard place." Their low volume small business customers will not be able to tolerate the dramatic rate increase a 'pass-through' of the multi-line business PICC will produce and small carriers have neither the traffic volumes over which to spread the new charges without significantly increasing rates nor the operating margins within which to absorb those charges. Imposition of the $2.75 multi-line PICC will likely double the effective cost of access for small carriers, net of the access charge reductions mandated by the Commission.

While it understands the Commission's desire to insulate residential customers from dramatic rate increases, TRA disagrees with the Commission's assessment that the imposition of a $2.75 multi-line business PICC is a "reasonable measure." Not only is it discriminatory, squarely at odds with the principles of cost-causation articulated by the Commission, and constitutes the very type of implicit subsidy the Congress directed the Commission to eliminate, but as noted above, its impact on small IXCs will be likely be devastating. Nor is it an answer to assert that the $2.75 multi-line business PICC is part of a transitional mechanism and will likely be eliminated over the next three to four years. The competitive and financial damage inflicted on the small carrier community during the transitional period will be widespread and irreparable.

TRA urges the Commission to reduce the multi-line business PICC to the level at which the primary residential and single-line business PICC is currently set, to be increased in tandem with the primary residential and single-line business PICC. Such an action would eliminate the subsidy implicit in the multi-line business PICC, cure the discrimination between the multi-line business PICC and the primary residential and single-line business PICC, render the multi-line business PICC consistent with cost-causation principals, and avoid inflicting upon the small IXC community devastating financial and competitive harm. TRA recommends that the differential between the current and revised multi-line business PICC should be recovered during the PICC transition period through usage-based charges applied in a competitively-neutral manner. The Commission has asserted that its rules "should promote competition, not protect certain competitors." The logical corollary of this view is that the Commission's rules should not hinder competition or unduly burden one class of competitors, particularly when that class of competitors is comprised of the smallest providers.

Several points are particularly telling in assessing the merits of the Commission's elimination of the "unitary" option for purchasing tandem-switched access. First, to TRA's knowledge, no entity -- IXC, incumbent LEC or competitive LEC -- currently supports the elimination of the unitary option. An industry consensus emerged during this proceeding in favor of retention of the unitary option, as such prior opponents as AT&T and TCG came out in favor of making permanent the heretofore interim transport rate structure. Second, virtually all IXCs that utilize tandem-switched transport currently acquire it under the unitary option. Third, elimination of the unitary option will result in significant cost increases for many IXCs, given that under the partitioned arrangement, mileage measurements will be based upon the physical routing of the traffic rather than the distance between the end office and the serving wire center, and one fixed charge will be replaced by two. Fourth, the resultant adverse financial and other impacts will be borne primarily by those least able to withstand the burden -- *i.e.,* smaller carriers and rural, and even suburban, consumers, the former because they are the primary users of tandem routing and the latter because they are served primarily by tandem-switched transport.

TRA submits that the unitary option has worked well over the past four years. It is strongly favored by most IXCs and seemingly opposed by no one. It is commonly used. It has, as the Commission intended, "facilitated the growth of small IXCs to compete with larger carriers," fostering a "pluralistic supply in the interexchange market." Given the often identical routing of tandem-switched transport and direct-trunked traffic, the unitary option is non-discriminatory and as consistent with principals of cost-causation as is direct-trunked transport. Elimination of the unitary option will cause financial and competitive hardships for small IXCs, as well as rural, and even suburban, consumers. The benefits that purportedly would flow from the elimination of the unitary option are theoretical in nature and generally without a constituency. The old cliche "if it ain't broke, don't fix it" comes to mind here

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PETITION FOR RECONSIDERATION OF
TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.429(a) of the Commission's Rules, 47 C.F.R. § 1.429(a), hereby seeks reconsideration of two elements of the First Report and Order, FCC 97-158 (released December 24, 1996) which will uniquely and adversely impact the small to mid-sized interexchange carriers ("IXCs") that comprise the large majority of TRA's resale carrier members (the "First Report and Order").[1] Specifically, TRA urges the Commission (i) to reduce the multi-line business preferred interexchange carrier charge ("PICC") to the level of the residential and single-line business PICC; and (ii) to reinstate the "unitary" option for purchasing tandem-

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[1] Access Charge Reform (First Report and Order), CC Docket No. 96-262, FCC 97-158 (May 16, 1997), *pet for stay denied* FCC 97-216 (June 18, 1997), *pet. for rev. pending* Southwestern Bell Telephone Company v. FCC, Case No. 97-2620 (and consol. cases) (8th Cir. June 16, 1997).

switched transport. These actions are necessary to avoid inflicting serious competitive and financial harm on the small carrier community.

I.

INTRODUCTION

A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members are also among the many new market entrants that are or will soon be offering local exchange telecommunications services.

An active participant in this proceeding, TRA welcomed access charge reform and applauded the Commission for undertaking the formidable task of rendering its access charge regime compatible with the new competitive paradigm established by the Telecommunications Act of 1996 ("Telecommunications Act").[2] Because of its strongly-held belief that reform of the existing system of interstate access charges was, and continues to be, a essential both to fostering new local exchange/exchange access, and to preserving existing interexchange, competition, TRA supported the Commission's access charge reform initiatives. In its comments, TRA, however,

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[2] Pub. L. No. 104-104, 110 Stat. 56, § 101 - 104 (1996).

expressed deep concern and urged the Commission to exercise care to ensure that the reformatory actions it ultimately took did not inadvertently dampen competition in the interexchange market, much of which is provided by the hundreds of small to mid-sized carriers that currently populate that market, or hinder the competitive entry by such small to mid-sized providers into the local exchange/exchange access market. Certainly, "regulatory reform" which produces a diminution in the level of competition and/or the number of competitors in a market is not sound public policy.

TRA is comprised in large part of small to mid-sized carriers serving small to mid-sized businesses.[3] The average TRA resale carrier member has been in business for five years, serves 10,000 customers, generates annual revenues of $10 million and employs in the neighborhood of 50 people. In other words, the average TRA resale carrier member is an entrepreneurial enterprise, which has gained a legitimate, but nonetheless precarious, foothold in the telecommunications industry.

The telecommunications resale industry is a maturing market segment comprised of an eclectic mix of established, publicly-traded corporations, emerging, high growth companies and newly created enterprises. Among TRA's resale carrier members, roughly 30 percent have been in business for less than three years and over 80 percent were founded less than a decade ago. And while the growth of TRA's resale carrier members has been remarkable, the large majority of these entities remain relatively small. Nearly 35 percent of TRA's resale carrier members generate revenues of $5 million or less a year and less than 20 percent have reached the $50 million revenue threshold. Seventy-five percent of TRA's resale carrier members employ

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[3] Data regarding TRA's resale carrier members is drawn primarily from TRA's "1996 Reseller Membership Survey & Statistics" (September, 1996).

less than 100 people and nearly 50 percent have work forces of 25 or less. Nonetheless, more than a third of TRA's resale carrier members provide service to 25,000 or more customers. Indicative of the maturation of the interexchange resale industry, roughly half of TRA's resale carrier members now are "switch-based" in at least one of their markets, while the remainder operate on a non-facilities basis.

As noted above, TRA's resale carrier members primarily serve small to mid-sized businesses. Although a sizeable percentage of TRA's resale carriers serve both the residential and commercial markets, nearly 80 percent of TRA's resale carrier members generate more than 80 percent of their revenues from commercial accounts. The large preponderance of the commercial accounts served by TRA's resale carrier members range from $100 to $1,000 a month. Accounts generating in excess of $5,000 a month are the exception.

TRA's resale carrier members provide their small to mid-sized business customers with access to rates generally available only to much larger users. They also offer these small to mid-sized commercial users enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally reserved for large-volume corporate users. And TRA's resale carrier members are at the forefront of industry efforts to diversify and expand service and product offerings, endeavoring in so doing to satisfy in a convenient and cost-effective manner all of the telecommunications needs of small to mid-sized business customers.

Telecommunications resale has emerged as a vibrant, dynamic industry. Interexchange resale carriers have carved out a 10 to 15 percent share of the interexchange market,[4] facilitating in so doing the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm for their services. The emergence and dramatic growth of the resale industry over the past five to ten years has produced thousands of new jobs and myriad new commercial opportunities. In addition, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.

TRA submits that certain elements of the Commission's access charge reform package will have the unintended and unfortunate result of not only diminishing the number of small and mid-sized competitors in the interexchange market, but of limiting the available service options for small business customers. For example, imposition of a $2.75 (and ultimately higher) multi-line business PICC will place small IXCs between the proverbial "'rock and a hard place." Their low volume small business customers will not be able to tolerate the dramatic rate increase a 'pass-through' of the multi-line business PICC will produce and small carriers have neither the traffic volumes over which to spread the new charges without significantly increasing rates nor the operating margins within which to absorb those charges. Imposition of the $2.75 multi-line PICC will likely double the effective cost of access for small carriers, net of the access charge reductions mandated by the commission. For its part, elimination of the "unitary" option for purchasing tandem-switched transport, in conjunction with dramatic increases in tandem switching rates, will result in further dramatic cost increases for small carriers.

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4 Long Distance Market Shares (Third Quarter 1996), Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 5 (Jan. 15, 1997).

If small business is the engine that is driving the economy, it makes little sense to cripple small carriers and hinder their ability to serve other small businesses. The Commission should act quickly to avoid this end by (i) reducing the multi-line business preferred interexchange carrier charge ("PICC") to the level of the residential and single-line business PICC; and (ii) reinstating the "unitary" option for purchasing tandem-switched transport.

II.

ARGUMENT

A. The Multi-line Business PICC Should Be Reduced To The Level of the Residential and Single Line Business PICC

The PICC had its genesis in the Commission's reluctance to uncap the subscriber line charge in implementing the Congressional directive to "create secure and explicit mechanisms to achieve universal service goals."[5] The Commission recognized that in order to eliminate implicit subsidies in the access charge system, it was necessary to "reform the current rate structure to bring it into line with cost-causation principles."[6] To realize this end, the Commission concluded that "[nontraffic sensitive ("NTS")] costs incurred to serve a particular customer should be recovered through flat fees, while traffic-sensitive costs should be recovered through usage-based rates."[7] The Commission, however, "decline[d] to implement this goal by increasing the [primary residential or single-line business] SLC above its existing $3.50 level."[8]

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[5] Access Charge Reform (First Report and Order), CC Docket No. 96-262, FCC 97-158 at ¶ 35.

[6] Id. at ¶¶ 35, 36.

[7] Id. at ¶ 36.

[8] Id. at ¶ 38.

Residual common line revenues, the Commission directed, would be recovered "through a flat, per-line charge assessed on the [interexchange carrier ("IXC")] to whom the access line is presubscribed."[9]

Expressing concerns regarding the affordability of telecommunications service for residential users, however, the Commission set "the PICC for primary residential and single-line business lines at not more than the existing flat-rated line charges for the first year."[10] Such "affordability concerns" did not prompt the Commission to retain the cap on the multi-line business SLC or prevent the Commission from setting the initial multi-line business PICC at a level more than five times that of the primary residential and single-line business PICC -- *i.e.*, $2.75. The Commission acknowledged that this approach "will require customers with multiple telephone lines to contribute, for a limited period, to the recovery of common line costs that incumbent LECs incur to serve single-line customers."[11] But, the Commission reasoned, "this aspect of the plan is a reasonable measure to avoid an adverse impact on residential customers."[12]

While it understands the Commission's desire to insulate residential customers from dramatic rate increases, TRA disagrees with the Commission's assessment that the imposition of a $2.75 multi-line business PICC is a "reasonable measure." Not only is it discriminatory, squarely at odds with the principles of cost-causation articulated by the Commission, and constitutes the very type of implicit subsidy the Congress directed the Commission to eliminate, but as noted above, its impact on small IXCs will likely be devastating. Nor is it an answer to

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9 Id.

10 Id.

11 Id. at ¶ 102.

12 Id.

assert that the $2.75 multi-line business PICC is part of a transitional mechanism and will likely be eliminated over the next three to four years. The competitive and financial damage inflicted on the small carrier community during the transitional period will be widespread and irreparable.

The impact of the imposition of the $2.75 multi-line business PICC varies greatly by the size of the carrier and the usage levels of the customer. A large carrier has huge numbers of customers and massive volumes of traffic over which to spread, and generally more than adequate operating margins within which to absorb, the charge; a small carrier is possessed of neither. The per-minute increase occasioned by a "pass-through" of the PICC for a high volume customer would be substantially less than it would be for a small volume customer. It is one thing to spread a $2.75 charge over one hundred minutes and quite another to spread it over a thousand minutes. The worst possible situation is presented by a small carrier which is serving primarily low volume, small business customers -- the very situation confronting most of TRA's resale carrier members.

If TRA's resale carrier members simply "pass-through" the $2.75 multi-line business PICC, the result will be triple digit percentage increases in net access costs for their low volume small business customers. If TRA's resale carrier members spread the new charges across all minutes, the result will be a substantial increase in per-minute charges, because the bulk of their customers are low volume small business users. Such increases in turn will undermine TRA's resale carrier members' competitive position because larger carriers with larger percentages of high volume large business customers, as well as substantial numbers of residential customers, can spread the charges across more minutes, producing lower percentage rate increases. The alterative for TRA's resale carrier members -- which is in reality no alternative at all -- is to simply absorb the new charges. While this may be a viable option for larger carriers, particularly given the transitional nature of the new charges, it is a "false choice" for TRA's resale carrier members because they lack the necessary operating margins. If a carrier's per-minute margin is less than a cent, it realistically cannot absorb an additional per-minute cost of two or three cents.

TRA's resale carrier members have survived and prospered in a market populated with the likes of AT&T, MCI and Sprint. They have done so by providing quality service at affordable prices to a market the larger carriers have neglected -- *i.e.,* the small business market. The multi-line business PICC will drive these small business customers to the larger carriers because the larger carriers will be better positioned to avoid substantial rate adjustments. TRA's resale carriers will thus not have been defeated by their far larger competitors or by the market forces that drive the "substantially competitive" interexchange market.[13] Against these opponents and in the face of these market forces, the market share of TRA's resale carrier members has progressively increased. TRA's resale carriers will have been defeated by an ill-conceived regulatory action which produced an unintended, but nonetheless devastating, market distortion.

The $2.75 multi-line business PICC is not only ill-conceived with respect to its market impact, it is, as noted above, discriminatory, squarely at odds with the principles of cost-causation articulated by the Commission in the First Report and Order, and constitutes the very type of implicit subsidy the Congress directed the Commission to eliminate. The $2.75 multi-line business PICC is discriminatory because it assesses a charge more than five times that levied on primary residential and single-line business lines, even though the facilities utilized are identical. There is no cost basis for charging an IXC more for carrying traffic originated on a multi-line

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[13] Competition in the Interstate, Interexchange Marketplace (First Report and Order), 6 FCC Rcd. 5880, ¶ 36 (1991), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569, 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668, 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995).

business line that for carrying traffic originated on a single-line business line. IXCs are assessed a greater charge for the former than the latter for reasons wholly unrelated to cost. Such a non-cost-based difference in treatment is facially discriminatory.

The $2.75 multi-line business PICC is at odds with the Commission's asserted objective of recovering costs from cost-causers. The Commission has declared its belief that its "rate structure rules [should be] consistent with cost-causation principles" in order to deliver accurate market signals.[14] Here, the costs being recovered by the $2.75 multi-line business PICC are not necessarily associated with multi-line business lines at all. As noted above, the Commission has acknowledged that this charge will also recover "common line costs that incumbent LECs incur to serve single-line customers."[15] Indeed, the multi-line business SLC alone generally recovers the costs associated with multi-line business lines:

> For multi-line business lines, the SLC will be adjusted to recover the average per-line interstate-allocated common line costs beginning July 1, 1997. To the extent incumbent price cap LECs, mostly in rural areas, have common line costs that significantly exceed the national average, we establish a ceiling on SLCs for multi-line business lines of $9.00, adjusted annually for inflation. . . . The data indicate that the long term ceilings we are establishing will permit incumbent price cap LECs to recover their average per-line common line revenues from 99 percent of their non-primary residential and multi-line business lines. . . . The record indicates that nationwide, the average interstate allocation of common line costs is only $6.10 per line, and that for more than half of multi-line business lines, the interstate common line costs are below the existing $6.00 ceiling.[16]

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[14] *See, e.g.,* Access Charge Reform (First Report and Order), CC Docket No. 96-262, FCC 97-158 at ¶ 180.

[15] Id. at ¶ 101.

[16] Id. at ¶¶ 77 - 80 (footnotes omitted).

Such a contribution, of course, constitutes an implicit subsidy. Indeed, the Commission has frankly stated that multi-line business users will be required to fund the recovery of cost for which they were not responsible in order to "avoid an adverse impact on residential customers."[17] As the Commission itself recognized in its Report and Order in Federal-State Joint Board on Universal Service, "Congress intended that, to the extent possible, 'any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today.'"[18] Current implicit subsidy mechanisms, the Commission acknowledged, include interstate access charges which "shift costs from . . . residential to business customers and from local to long distance services."[19] Moreover, Congress "placed on the Commission the duty to implement . . . [the] principles [guiding universal service reform] in a manner consistent with the pro-competitive purposes of the Act."[20] As discussed above, the subsidies embedded in the multi-line business PICC are not only implicit support mechanisms, but they will have serious adverse consequences for competition in the interexchange market.

In light of the forgoing, TRA urges the Commission to reduce the multi-line business PICC to the level at which the primary residential and single-line business PICC is currently set, to be increased in tandem with the primary residential and single-line business PICC. Such an action would eliminate the subsidy implicit in the multi-line business PICC, cure

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[17] Id. at ¶ 101.

[18] Federal -State Joint Board on Universal Service (Report and Order), CC Docket No. 96-45, ¶ 9 (May 8, 1997), *pet. for stay pending, pet. for rev. filed sub nom.* Texas Office of Public Utility Counsel v. FCC, Case No. 97-60421 (and consol. cases) (5th Cir. June 25, 1997).

[19] Id. at ¶¶ 9 - 10.

[20] Id. at ¶ 7.

the discrimination between the multi-line business PICC and the primary residential and single-line business PICC, render the multi-line business PICC consistent with cost-causation principals, and avoid inflicting upon the small IXC community devastating financial and competitive harm. TRA recommends that the differential between the current and revised multi-line business PICC should be recovered during the PICC transition period through usage-based charges applied in a competitively-neutral manner. The Commission has asserted that its rules "should promote competition, not protect certain competitors."[21] The logical corollary of this view is that the Commission's rules should not hinder competition or unduly burden one class of competitors, particularly when that class of competitors is comprised of the smallest providers.

B. The Commission Should Reinstate The "Unitary" Option For Tandem-Switched Transport

Currently, IXCs may chose between two rate structures for the purchase of tandem-switched transport -- one providing for end-to-end access (the "unitary" option), the other characterized by a "partitioned" rate structure. Under the former, an IXC purchases tandem-switched transport between the serving wire center and end office at a single, per-minute rate, with mileage measured between the two offices without reference to the physical routing of the traffic. Under the latter, an IXC pays a flat-rated charge for the link between the serving wire center and the tandem, and a per-minute charge between the tandem and the end office, with mileage based on the physical routing of traffic over each link. Under both the unitary and the partitioned options, an IXC pays a separate per-minute charge for tandem switching.

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[21] Access Charge Reform (First Report and Order), CC Docket No. 96-262, FCC 97-158 at ¶ 180.

Effective July 1, 1998, the Commission has mandated that "all incumbent LECs must eliminate the unitary pricing option for tandem switched transport," requiring tandem-switched transport to be provided exclusively under the partitioned arrangement.[22] The Commission cited a number of reasons for doing so. According to the Commission, the partitioned arrangement "reflects the manner in which the incumbent LEC incurs the cost of providing each component of tandem-switched transport,"[23] whereas "the unitary rate option does not accurately reflect the manner in which LECs incur costs in providing tandem-switched transport and, therefore, does not provide maximum incentive for IXCs to use transport facilities efficiently."[24] Moreover, in the Commission's view, "the unitary rate structure inhibits the development of competitive alternatives to incumbent LEC tandem-switched transport."[25] And finally, it is the Commission's belief that the unitary rate structure "does not best promote 'full and fair' interexchange competition."[26] TRA urges the Commission to reconsider these view.

Several points are particularly telling in assessing the merits of the Commission's action. First, to TRA's knowledge, no entity -- IXC, incumbent LEC or competitive LEC -- currently supports the elimination of the unitary option. An industry consensus emerged during this proceeding in favor of retention of the unitary option, as such prior opponents as AT&T and TCG came out in favor of making permanent the heretofore interim transport rate structure. Second, virtually all IXCs that utilize tandem-switched transport currently acquire it under the

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[22] Id. at ¶ 168.

[23] Id. at ¶ 175.

[24] Id. at ¶¶ 175, 178.

[25] Id. at ¶ 179.

[26] Id. at ¶ 180.

unitary option. Third, elimination of the unitary option will result in significant cost increases for many IXCs, given that under the partitioned arrangement, mileage measurements will be based upon the physical routing of the traffic rather than the distance between the end office and the serving wire center, and one fixed charge will be replaced by two.[27] Fourth, the resultant adverse financial and other impacts will be borne primarily by those least able to withstand the burden -- *i.e.,* smaller carriers and consumers in rural, and even suburban, areas, the former because they are the primary users of tandem routing and the latter because they are served primarily by tandem-switched transport.

TRA disagrees with the Commission's view that it is appropriate to deny small IXCs an end-to-end access option such as that available to purchasers of direct-trunked transport simply because "[t]andem-switched transport customers . . . obligate the LEC to transport their traffic between the serving wire center and the tandem serving a particular end office or group of end offices and to perform the tandem switching function," whereas, '[p]urchasers of direct-trunked transport purchase an end-to-end service" -- *i.e.,* "incumbent LEC transport capacity between two end points."[28] In today's network, all interoffice transport facilities are generally shared, rendering such concepts as "dedicated' and "common" virtually irrelevant with respect to the physical routing of traffic. As the Commission has previously recognized, "the physical routing of direct-trunked transport may parallel the routing of tandem-switched transport, passing through the tandem office, or may pass through some other intermediate LEC office."[29] In fact,

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27 Competitive Telecommunications Association v. FCC, 87 F.3d 522, 524 (D.C. Cir. 1996)

28 Access Charge Reform (First Report and Order), CC Docket No. 96-262, FCC 97-158 at ¶ 182.

29 Transport Rate Structure and Pricing (First Report and Order), 7 FCC Rcd. 7006, ¶ 27 (1992).

significant amounts of direct-trunked traffic are routed through tandem locations, at which locations multiplexing or digital cross-connect processing is undertaken.

Given that it is the incumbent LEC that determines the routing of both direct-trunked and tandem-switched circuits and given that the incumbent LEC often uses identical routing paths for direct-trunked and tandem-switched traffic, TRA submits that the contention that tandem-switched transport customers must be denied an end-to-end access option simply because their traffic, unlike direct-trunked traffic, must necessarily traverse a tandem is far from compelling. If the routing of the traffic is the same and the same network facilities are employed in transporting the traffic, the fact that some of the traffic was routed based on an "obligation" and some was routed as a result of network design decisions, would appear to be a distinction of little consequence. Indeed, according carriers significantly different treatment based upon such a seemingly meaningless distinction smacks of unreasonable discrimination. Such discrimination is, of course, all the more sinister because it favors large carriers to the detriment of small carriers.

The U.S. Court of Appeals for the District of Columbia Circuit made clear in Competitive Telecommunications Association v. FCC, 87 F.3d 522, 532-33, 536 (D.C. Cir. 1996), that it was incumbent upon the Commission to ensure that any difference in charges paid for direct-trunked and tandem-switched transport must be cost-justifies or represent a rational departure therefrom. Imposing different pricing rules on traffic transport over identical routes using the same facilities certainly cannot be justified on the basis of cost differences and seemingly has little rationale basis. Exacerbating this concern, the unitary pricing option appears to be far more consistent with the Total Element Long Run Incremental Cost ("TELRIC") methodology utilized by the Commission to price network interconnection and unbundled network elements than the partitioned option.[30] After all, the TELRIC model assumes only that "wire centers will be placed at the incumbent LEC's current wire center locations," but that otherwise "the reconstructed network will employ the most efficient technology for reasonably foreseeable capacity requirements."[31] The actual number and location of existing tandem locations is thus not a relevant consideration within the TELRIC environment.

As noted above, elimination of the unitary option will result in significant cost increases for many of TRA's resale carrier members. Critical in this respect is the measurement of mileage within the partitioned rate structure based upon the physical routing of the traffic between (i) the serving wire center and the tandem, and (ii) the tandem and the end office, rather than upon the distance between the end office and the serving wire center. Small IXCs most often have little choice but to use tandem-switched transport and have no ability whatsoever to influence either the number and/or location of incumbent LEC tandems or the routing of traffic within the incumbent LEC network. Yet it is these network design decisions that will determine tandem-switched transport costs. Moreover, as incumbent LECs enter the "in-region," interLATA market and small IXCs enter the local exchange/exchange access market, these cost-impacting decisions will be made by competitors with an incentive to disadvantage competing providers.

TRA submits that the unitary option has worked well over the past four years. It is strongly favored by most IXCs and seemingly opposed by no one. It is commonly used. It

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[30] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶¶ 672 - 703 (1996), *motion for stay denied,* 11 FCC Rcd. 11754, *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19734 (1996), *further recon. pending, pet. for rev. pending sub nom.* Iowa Utilities Board v. FCC (and consolidated cases), Case No. 96-3321, *et al.*, (8th Cir. Sept. 5, 1996), *partial stay granted* 109 F.3d 1418 (1996), *stay lifted in part* (Nov. 1, 1996), *motion to vacate stay denied* 117 S.Ct. 429 (1996).

[31] Id. at ¶ 685.

has, as the Commission intended, "facilitated the growth of small IXCs to compete with larger carriers," fostering a "pluralistic supply in the interexchange market."[32] Given the often identical routing of tandem-switched transport and direct-trunked traffic, the unitary option is non-discriminatory and as consistent with princi-pals of cost-causation as is direct-trunked transport. Elimination of the unitary option will cause financial and competitive hardships for small IXCs, as well as rural, and even suburban, consumers. The benefits that purportedly would flow from the elimination of the unitary option are theoretical in nature and generally without a constituency. The old cliche "if it ain't broke, don't fix it" comes to mind here

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[32] Access Charge Reform (First Report and Order), CC Docket No. 96-262, FCC 97-158 at ¶ 180

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to reconsider its First Report and Order to avoid inflicting serious competitive and financial harm on the small carrier community. To this end, TRA urges the Commission (i) to reduce the multi-line business preferred interexchange carrier charge ("PICC") to the level of the residential and single-line business PICC; and (ii) to reinstate the "unitary" option for purchasing tandem-switched transport. These actions are necessary to avoid inflicting serious competitive and financial harm on the small carrier community.

Respectfully submitted,

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